

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The issues controverted in this matter are contained within K.S.A. 44-534a as being jurisdictional issues from which appeal from preliminary hearings may be taken and are thus properly before the Appeals Board for its decision.

Claimant, a manager for Braum's Ice Cream Store, alleged injury through her last day worked, December 28, 1993, to her right wrist, elbow and arm. Claimant testified to suffering pain in her right upper extremity while performing her everyday duties with respondent. Claimant failed to advise her supervisors of the problems and terminated her employment on December 28, 1993, due to health problems not associated with her alleged injury.

Claimant did not seek medical care until June 13, 1994, at which time she notified Braum's of her alleged injury. K.S.A. 44-520 requires notice of the accident, stating the time and place and particulars thereof, and the name and address of the person injured, be given to the employer within ten (10) days after the date of accident, except that actual knowledge of the accident by the employer or the employer's duly authorized agent shall render the giving of such notice unnecessary. In this instance, claimant acknowledges she did not provide notice to the respondent of an injury within ten (10) days of the date of injury. The claimant is allowed to provide notice to the employer within seventy-five (75) days after the date of the accident, if the claimant can show that failure to so notify under the ten (10) day rule was due to "just cause".

The language of K.S.A. 44-520 appears to hold conclusively that any notice provided after the seventy-five (75) day limit is untimely. Claimant acknowledges failure to provide notice to the respondent from December 28, 1993 to June 13, 1994, a period well beyond the seventy-five (75) day limitation found in K.S.A. 44-520.

When claimant began suffering problems in June 1994, she obtained medical treatment from two separate doctors. She told Dr. Stromberg that her pain began in March 1994. She advised Dr. James early in June 1994 that she had been suffering ongoing problems for approximately three (3) months to her right wrist, elbow and arm.

It is claimant's burden to prove her right to an award for compensation by proving all the various conditions upon which her right to a recovery depends by a preponderance of the credible evidence. See K.S.A. 44-501 and K.S.A. 44-508(g). The Administrative Law Judge found claimant had failed to prove not only that she had provided appropriate notice under K.S.A. 44-520, but also that she had suffered accidental injury arising out of and in the course of her employment with respondent on the dates alleged.

With claimant's last day worked being December 28, 1993, and with claimant's acknowledgement of notice to the respondent on June 13, 1994, claimant did not provide notice within the seventy-five (75) day maximum limitation of K.S.A. 44-520 and the Appeals Board so finds. With the medical information from Dr. Early and Dr. Stromberg, the Appeals Board further finds claimant has failed to prove accidental injury arising out of and in the course of her employment with respondent on the dates alleged.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes, dated April 3, 1995, is affirmed and claimant is denied benefits against respondent and its insurance carrier for the injury alleged through December 28, 1993.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July, 1995.

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

c: Paul D. Hogan, Wichita, Kansas  
Ronald J. Laskowski, Topeka, Kansas  
Nelsonna Potts Barnes, Administrative Law Judge  
David A. Shufelt, Acting Director